

DECISION

THE COMPTROLLER GENERAL 74885
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE:

B-209775

DATE: April 15, 1983**MATTER OF:**

Armor Elevator Company-Memphis, Inc.

DIGEST:

1. GAO will not disturb a procuring agency's determination that a firm is nonresponsible when that determination is reasonably based on requirement for timely response to demands for service and the specification sets forth minimum levels of repair teams, repair parts and manuals that contractor must have in the local area to provide timely service, which levels the firm clearly does not satisfy.
2. Protest initially filed with procuring agency after bid opening alleging that specification provisions concerning minimum level of repair teams, repair parts and manuals that contractor must have in the local area are restrictive is untimely under GAO Bid Protest Procedures and will not be considered on the merits.

Armor Elevator Company-Memphis, Inc. protests the rejection of its low bid under invitation for bids No. 614-78-82 issued by the Veterans Administration Medical Center, Memphis, Tennessee to obtain scheduled maintenance and emergency repair service for its elevators during fiscal year 1983. The protest is denied in part and dismissed in part.

The invitation was issued August 13, 1982 and on the scheduled bid opening date, September 14, Armor-Memphis submitted the low bid. The VA conducted a preaward survey of Armor-Memphis' local facilities which disclosed that it employed only one full time service repair team and that it had only a small fraction of the repair and replacement parts and the maintenance manuals, diagrams, and other documentation needed to perform the contract properly and therefore did not satisfy minimum requirements for these

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areas set forth in the specifications. The VA determined that Armor-Memphis was not responsible on this basis, awarded the contract to the second low bidder, Dover Elevator Company, and so advised Armor-Memphis by letter of October 7. Armor-Memphis, in a letter of October 12, protested the rejection of its bid to the VA, which protest the VA denied by letter of October 25.

Armor-Memphis' letter of protest to this Office, received November 8, contends that the VA's determination of nonresponsibility was in error. Armor-Memphis argues that its parent, Armor Elevator Company, Inc., is one of the nation's largest elevator service companies and that that firm's resources outside the Memphis area must be taken into account in determining responsibility. Armor-Memphis argues further that even if only its own capabilities in Memphis are considered, it is fully capable of performing the contract, because it could have easily hired additional elevator repairmen from the local union hall when needed; it would have placed more parts in its local inventory if it won the contract; it could have obtained additional parts from warehouses operated by its parent in nearby cities or from dealers in Memphis; it could have relied upon the instructions furnished the VA when the elevators were installed; and its trained elevator technicians could have properly performed maintenance and repair without the other required manuals. Finally, Armor-Memphis contends that because Dover is headquartered in Memphis, it maintains the specified level of repair teams and equipment in Memphis, but that other firms headquartered elsewhere do not, so that the specification favored Dover and was restrictive of competition.

We have long recognized that a procuring agency has broad discretion in making responsibility determinations. Deciding a prospective contractor's probable ability to perform a contract involves a forecast which must of necessity be a matter of judgment. Such judgment should, of course, be based on fact and reached in good faith; however, it is only proper that it be left largely to the sound administrative discretion of the contracting agency involved. The agency logically is in the best position to assess responsibility; must bear the major brunt of any difficulties experienced in obtaining required performance; and must maintain day-to-day relations with the contractor. Johnson Graphic Industries Inc., B-205070, May 3, 1982, 82-1 CPD 409; 43 Comp. Gen. 229 (1963). Thus, we

will not disturb an agency determination of nonresponsibility unless it lacks a reasonable basis. The Mark Twain Hotel, B-205034, October 28, 1981, 81-2 CPD 361.

As the VA explains, continuous elevator service is crucial to the operation of its hospital so that the capability of the bidder to provide timely repairs is an important element in determining responsibility. Consequently, we believe the requirement that the contractor have available at its local facility an adequate number of repair teams, parts and manuals to perform the contract is reasonable and the VA is not required to consider the other, less timely, alternatives Armor-Memphis suggests, such as parts warehouses in other cities or hiring repairmen from the union hall when needed. Moreover, our review indicates that the VA's determination that Armor-Memphis failed to satisfy this aspect of responsibility is fully supported by the record. We therefore deny the protest.

As to the allegation that the specification provisions relating to repair teams, parts and manuals were restrictive of competition, our Bid Protest Procedures require that any alleged impropriety apparent prior to bid opening be initially filed prior to bid opening, either with the procuring agency or GAO. 4 C.F.R. § 21.2(a) and (b)(1) (1983); Construction Catering, Inc., B-207987, July 13, 1982, 82-2 CPD 49. In this respect, a protest filed well prior to bid opening would have permitted review of the allegedly restrictive provisions and, if the protest were meritorious, amendment of the solicitation prior to the exposure of bid prices and award of the contract. Brodart, Inc., B-195208, March 5, 1980, 80-1 CPD 173. Armor did not file its protest with the VA until after bid opening. This aspect of its protest is therefore dismissed as untimely.

J. H. Barclay Jr.
for Comptroller General
of the United States